1891

SUPREME COURT OF THE UNITED STATES.

No. 225.

THE UNITED STATES, APPELLANTS,

vs.

CATHERINE DE VILLEMONT, WIDOW, AND CARLOS DE VILLEMONT, JR., AND AL., HEIRS OF CARLOS DE VILLEMONT, SENR., DECEASED.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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Gideon, printer.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

United States district court, sitting in chancery.

VILEMONT et al.
vs.
THE UNITED STATES. } 134.

Land cause.

Be it known and remembered, that heretofore, at the May term, A. D. 1846, of the said court, to wit, on the sixteenth day of June of said year, Vilemont and others, plaintiffs in the above entitled cause, came, by their attorney, Louis Janin, esq., into the office of the clerk of said court and there filed their petition, which is in the words and figures following, viz:

Petition filed 16th June, 1846.

To the honorable district court of the United States for the district of Louisiana.

The petition of Catharine de Vilemont, widow of Carlos de Vilemont, senr., of Carlos de Vilemont, jr., Ursin de Vilemont, Pedro de Vilemont, Zoe de Vilemont and James Blaine, her husband, Don Carlos Gibson, Cecilia Gibson, and Adelia Gibson, the last three being infants, and appearing by the said Catherine, their grandmother and guardian, all of Chicot county, in the State of Arkansas, and Louis de Vilemont, a citizen of the State of Louisiana, said petitioners being the widow, children, and grand children of the late Don Carlos de Vilemont, and his only surviving heirs, respectfully shows:

The petitioners show that, on the 4th November, 1766, a grant was made to one de Vilemont, then a resident of the province of Louisiana, of the land lying in the rear of the plantation which the de Vilemont then had on the Mississippi river, about 8 leagues above the city of New Orleans, and on the same side of the river, and which he had acquired from one Ducoder.

That the land so granted to said de Vilemont was all the land lying in the rear of the first depth of the 40 arpents, and running back between the side lines of Side's plantation until they join, or until they should reach Lake Ponchartrain.

The petitioners show, that thereafter the said de Vilemont sold his plantation, but only with 40 arpents in depth, thus still retaining the land granted to him as aforesaid on the 4th November, 1766.

That the said de Vilemont afterwards died, leaving a son and heir, named Carlos de Vilemont, who was respectively the husband, father, and grandfather of the petitioners, and who died in 1824; and that the

of said Carlos de Vilemont, as heir of his said father, to the aforesaid land, have thus descended to the petitioners.

Petitioners show that their claim to said land has never been filed for confirmation.

That the title of the petitioners to the aforesaid tract of land is such a title as, according to the purport and tenor of the act of Congress, approved on the 17th June, 1844, entitled "An act to provide for the adjustment of land claims, &c.," ought to be confirmed.

Petitioners aver that they are not aware that the said land is claimed or possessed by any other person in opposition to the rights of the petitioners.

Wherefore the petitioners pray that the United States, by the district attorney of the United States, for the district of Louisiana, be cited, that the aforesaid claim be declared valid and confirmed, and that the surveyor general of the United States, for the State of Louisiana, be thereafter directed to survey said lands, and that for the *the* lands so surveyed and confirmed a patent may be issued the petitioners.

And petitioners pray for their costs and for all such further relief as the nature of the case may require.

(Signed) L. JANIN, *of counsel.*

And thereupon, at the same term, to wit, on the 22d day of June, A. D. 1846, was issued from the clerk's office, the following

Citation.

The United States of America, the President of the United States, to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon S. W. Downs, United States attorney, to appear before the honorable the judge of the district court of the United States, for the district of Louisiana, at a district court, to be holden on the first Monday of August, 1846, then and there to answer a petition in chancery, filed against the United States, wherein Vilemont and others are petitioners, and said United States defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Mem.—The defendant is to enter an appearance in the above cause, in the clerk's office, on or before the first Monday of August, 1846, otherwise this petition may be taken pro confesso.

Witness the honorable Theo. H. McCaleb, judge of the said court, this the 22d day of June, in the year of our Lord one thou-
[SEAL.] sand eight hundred and forty-six, and the seventieth year of American independence.

(Signed) L. E. SIMONDS, *D'y Clerk.*

Whereon was afterwards duly registered, according to law, the following

Marshal's return.

Received June 22d, 1846, and on the same day I served a copy of

the within citation and petition on S. W. Downs, esq., U. S. district attorney, in person. Returned June 22d, 1846.

(Signed) WM. E. WELLS,
U. S. Deputy Marshal.

And further, at the same term, to wit, on the 11th day of November, A. D. 1846, appeared the defendants, by their attorney, and filed the following

Answer.

In the district court of the United States, for the district of Louisiana.

VILEMONT et al.
vs.
THE UNITED STATES.

The answer of the United States, the defendants in the above named cause, respectfully shows, that they deny all and singular the facts and allegations of plaintiff's petition.

Wherefore they pray to be hence dismissed, and that plaintiffs be condemned to pay all costs.

(Signed) THOMAS J. DURANT,
Att'y U. S.

And afterwards, at the February term, A. D. 1849, of the said court, to wit, on the 29th day of March, of said year, was entered of record on the minutes, the following

Opening cause.

VILEMONT et al.
vs.
The UNITED STATES. } 134.

The hearing of this cause was regularly opened to day; Miles Taylor, esq., for the complainants, and the U. S. district attorney for the defendants, present. Evidence was adduced by the complainants, when the further hearing thereof was continued.

And be it remembered that the documents offered this day as evidence are the following:

1*st document endorsed thus:*

"6 Octobre, 1766, Adjudication de la habitation de Mr. Ducoder.
(Signed,) "LOUIS T. CAIRE, *Not'e.*"

Which document is in the words and figures following, to wit:

A Monsieur Foucault, commissaire de la marine, fais't fonction d'ordonnateur, et premier juge du conseil supérieur de la province de la Louisiane.

Le siéur Ducoder a l'honneur de vous representer comme était sur son départ et qu'il serait dans le dessein de vendre une habitation, scitué à la coste des Allemans en remontant le fleuve à sept lieu de

ville du même coste d'ycelle, attenant d'un coste, au Sr. Melle, jeune, et de l'autre au Sr. Villeray, de douze arpends ou environs de face sur la profondeur ordinaire, sur laquelle est une maison sur solle de 36 pieds de long sur 15 de large, une cuisine, magasin, et cabanne à negre, ainsi qu'un autre maison monte de charpante seulement de 37 pieds de long sur 42 de large, compris les galeries et entourage telle quel se poursuit et se comporte, en l'etat quel est, comme le supliant desirerait faciliter ses acquereurs, vu les circonstances des affaires de cette colonie en donnant un *un* de terme du jour de la vente payable entre les mains du Vre. qui en comptera à son fonde de pouvoir.

Il requiere qu'il vous plaise, Monsieur, permettre de faire la vente judiciairement par devant monsieur de Kermion, conseiller en votre conseil, et en presence de monsieur le procureur general du Roy de la dte. habitation et sesdependances pour être adjugée au dernier encheresseur, aux fins que le supliant soit assure de ses fonds par l'acte judiciaire et frey drois.

N'elle Orleans le 10 June, 1765.

(Signé) DUCODER.

Permis de vendre comme il est requis a la N'elle Orleans, le 11 June, 1765.

(Signé) FOUCAULT.

Pour copie conforme à l'original déposé en mon etude pour recours, en foi de quoi j'ai signé les presentes, et y'ai apposé le sceau de mon office à la Nouvelle Orleans, le 25 Aout, 1845.

(Signed) LOUIS T. CAIRE. [SEAL.]
Not. Pub.

L'an mil sept cent soixante six et le six Octobre, neuf heures du matinà la requete du S. Ducoder, ancien officier, et en vertu de l'ordonnance de M. Foucault, faisant fonction d'ordonnateur et de premier juge au conseil supérieur et de notre remise à ce jourd'huy nous Jean Jean Francois Huchet, ecuyer, S. de Kernion, conseiller commissaire, nomme en cette partie, en presence de Mr. le substitut du procureur general du roy, sommes transporte en la chambre du greffe au deffaut de banc de cour à l'èffet de faire proceder pour la troisieme et dernier crié, et enchere de la d'te habitation situé à sept lieux de cette ville du même coste en remontant le fleuve, telle qu'elle est detaillée au premier procès verbal c'y dessus et que le tout se poursuit et comporte sans reserve, vu le procès verbal de publication, et affiche apposée le jourdhui dans touts les lieux ord're de cette ville par maison huissier, et encore apres avoir été publie à son de trompe a l'issue de la grande messe le monde soitant en foule, et encore ce jourd'hui dans tous les carrefours de cette ville, et restant trouve encherisseurs nous avons de nouveau fait publier à haute et inteligible voix que l'on allait tout presentment proceder à la vente et adjudication au plus offrant et dernier encherisseur de la d'te habitation et dependances sans reserve, aux conditions susdite sur quoy l'enchere donnée du Sr. Regnard, de trois mille

trois cent livres; par le S. Maison à quatre mille livres; par le S. [illegible] à quatre mille cent livres; par le S. Couturie à quatre mille deux cent livres; par le S. Perret à quatre mille trois cent livres; par le S. Couturie à quatre mille six cent livres; par le S. Perret à quatre mille sept cent livres. Perret à cinq mille trois cent livres; par le S. Couturie à cinq mille quatre cent livres; par le S. Perret à cinq mille cinq cent livres, et apres avoir attendre jusqu'à midi sonné sans que personne ne cet voulu sur dire, nous conseiller comm're susdit du consentement de M. le substitut du procureur general du roy, du S. Ducoder, avons adjugé, et adjugeons purement et simplemente, la dite habitation et dépendances au de S. de Villemon, pour la somme de cinq mille cinquante cinq livres, qu'il a promis payer dans six mois en piastres ou en toute autre monnaie vallant icelle, et de remplir les clauses du present procès verbal ainsi qu'il y est expliqué; et le S. Ducoder a dit et déclaré qu'el. . . . M. de Vaugine pour caution et le la dispense d'en donner et ont signé.

(Signé,) Ducoder, Vaugine, Gerard de Vilemon, Maurice, Huchet de Kernion. J'ay regu le montant six dessus la somme cinq mille cinquante cinq livres, à la Nouvelle Orleans, le 22 9-bre, 1766.

(Signé) DUCODER.

Pour copie conforme à l'original déposée en mon étude pour recours; en foi de quoi j'ai signé les presentes, et y'ai apposé le sceau de mon office.

Nouvelle Orleans, le 26 Aout, 1845.

(Signed) LOUIS T. CAIRE,
[SEAL.] *Not. Pub.*

Second document endorsed thus:

"Copie de la concession, par Aubrey et Foucault de la Cypriere à S. de Villemon, 4 Nov. 1766."

Which document is in the words and figures following, to wit:

Vu l'enoncé en la requête en l'autre part de Mr. Villemont, et le certificat de Mr. Andry, sous ingenieur en cette colonie, nous avons concédé and concédons par les présentes à mond't Sr. Villemont, la jeune, à fondeur, qui se trouvera au dela de quarante arpens ordinaires de l'habitation qu'il a acquise de Mr. Ducoder, située au quartier des Allemands, à environ haut lieues au dessus, et du même côté de cette ville, et ce sur le prolongement jusques à la rencontre deux lignes de ces deux limites, ou jusques au Lac Ponchartrain; si les deux sus-dites lignes ne se croisent par avant d'y arriver, pour par lui et ses hoirs, ou ayant cause, enjouir et dispose en toute propriété et usufruit, comme de chose à lui appartenant, sans titres en possession anterieur, au contraire; à la charge de paier ses droits seigneureaux, si quelques-uns sont par la suite établis en cette dite colonie.

Nous en reservons d'ailleurs, pour sa Majesté, tous et chacun, les bois nécessaire pour construction de fort, magazins, et autres ouvrages qu'elle a ordonné, ou pourra ordonner à l'avénir, même par le radout et

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de ses vaisseaux, toutefois et quantier il en sera besoin, ainsi que le terrain nécessaire pour chemin roiaux et fortification.

Donne à la Nouvelle Orleans, le 4 9-bre, 1766.

(Signé) AUBREY ET FAUCAULT.

LAND OFFICE, *New Orleans*, 2d *April*, 1845.

This is to certify that the foregoing is a true copy from the records of this office.

Witness my hand the day and year above written.

(Signed) PETER LAIDLAW, *Register*.

(Close of evidence offered 29th March, 1849.)

And afterwards, at the May term, A. D. 1849, to wit, on the 30th day of May of the said year, was entered of record on the minutes the following

Closing and submission of cause.

VILEMONT et al.
vs. } 134.
The UNITED STATES.

This cause, as opened on the 29th of March last, was to-day taken up, and additional evidence offered for the plaintiffs, when the court took the same under advisement.

And be it remembered, that the additional evidence this day offered ere the closing of the cause is the following:

Deposition of Louis Bouligny, in relation to the residence of the grantee and the heirship of petitioners.

VILEMONT et al.
vs. } 134.
THE UNITED STATES.

U. S. DISTRICT COURT, CLERK'S OFFICE,
May 29th, 1849.

Testimony taken by consent of parties in the above cause, before Robert M. Lusher, deputy commissioner in land causes.

Present, Miles Taylor, esq., for plaintiffs; Thomas J. Durant, esq., on behalf of defendants.

Louis Bouligny, esq., witness for the plaintiffs, being duly sworn, deposes as follows:

That he was well acquainted with Carlos de Vilemont, who was witness's uncle, his mother's brother; he died in the year 1822 or 1823, aged some sixty odd years; his father, Gerard de Vilemont, died about 1768.

Witness is acquainted with the title in question here; the concession

was made to said Gerard de Vilemont; witness had the original in possession some years since, and gave it to Louis de Vilemont, who subsequently entrusted it to an attorney by the name of Morel, who lost or mislaid it.

The grantee, Gerard de Vilemont, resided in Louisiana; was lieutenant governor in the years 1767-68, until he died; he had resided in Louisiana for a long while previous to the time of his death.

Witness is acquainted with Charles, Louis, Pierre, Zoe de Vilemont, the petitioners, and know them to be the descendants of Gerard de Vilemont.

The tract in front of the land described in the grant was bought by de Vilemont from Ducoder, and a portion of it is now owned by Pierre Soniat du Fossat.

It is in the parish of St. Charles, on the left bank of the Mississippi, about eight leagues above the city of New Orleans.

The attorney for the United States being present, propounds no cross questions.

(Signed) LS. BOULIGNY.

The foregoing I certify to be the true and exact deposition of Louis Bouligny, esq., witness for the plaintiffs, as taken down by me in writing, faithfully interpreted from French into English, read aloud to the witness, and by him signed in my presence.

Witness my hand hereto this 29th May, 1849.

(Signed) ROBT. M. LUSHER,
Deputy commissioner in land causes.

And afterwards, at the same term, to wit, on the eleventh day of June, A. D. 1849, was rendered and recorded on the minutes of the court the following

Judgment,

which was duly engrossed and signed on the twelfth day of June, 1849, viz:

United States district court, eastern district of Louisiana. Sitting in chancery. May term, 1849.

Monday, June 11th, 1849. Present, the hon. Theo. H. McCaleb.

CARLOS DE VILEMONT et al.
vs.
THE UNITED STATES. } No. 134.

This cause came on to be heard at the February term, to wit, on the 29th of March last, on the petition and answer, and evidence adduced, and subsequently, to wit, on the 30th May last past, at the present term, was submitted to the court.

And the court having maturely considered the same, and being satisfied from the evidence that, on the 4th day of November, 1766, the proper officers of the province of Louisiana, under the French Govern-

having full power and authority so to do, did grant and concede to M. de Villemont, the ancestor of the plaintiffs, who was then a resident of said province, and owner of a plantation on the German coast upon the Mississippi river, about eight leagues above and on the same side of said river as the city of New Orleans, and which he acquired from Ducoder, the land in the rear of said plantation beginning at the termination of the first forty arpents in depth, and extending back between the prolongation of the side lines of the said front plantation until the said lines intersect each other, or to Lake Ponchartrain, if the said lines do not intersect each other before reaching said lake, as appears from the certified copy of the concession on file; and being further satisfied that the petitioners are the heirs and legal representatives of the said de Villemont, and that the said grant was and is a good and valid grant from the French Government to the said de Villemont, and that the same was protected by the treaty made between the United States and the French Republic on the 30th of April, 1803, as well as by the Constitution and laws of the United States and the laws of nations.

This court, acting under and by virtue of an act approved on the 26th of May, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims;" and also an act approved on the 17th June, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and those parts of the States of Mississippi, and Alabama south of the 31st degree of north latitude, and between the Mississippi and Perdido rivers," doth order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed, that the petitioners, Catherine de Villemont, widow of Carlos de Villemont, sr., Carlos de Villemont, jr., Ursin de Villemont, Pedro de Villemont, Zoë de Villemont, Carlos Gibson, Cecilia Gibson, and Adelia Gibson, (the last three represented by the said Catharine de Villemont, their grandmother and guardian,) are the true and legal owners of, and have good title against the United States, the defendants, in and to the land claimed in their petition, and granted as aforesaid to the said de Villemont, to wit: All the land lying in the rear of the plantation acquired by the said de Villemont from Ducoder, and now owned and possessed by , situate on the left bank of the Mississippi river, about eight leagues above the city of New Orleans, beginning at forty arpents from the river, and extending back between the side lines of the said plantation to the Lake Ponchartrain, or until the said lines intersect each other.

It is further ordered, *ordered*, adjudged, and decreed, that in case said land, so claimed by the said petitioners in their petition, or any part or portion thereof, shall have been sold or otherwise disposed of by the United States, or if the same shall not have been heretofore located, said plaintiffs shall be, and they are hereby, authorized to enter, in any land office in the State of Louisiana, in parcels conformable

to sectional divisions and sub-divisions, a like quantity of public land after the same shall have been offered at public sale.

Judgment rendered 11th June, 1849.

Judgment signed 12th June, 1849.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And finally, at the same term, and on the same twelfth day of June, A. D. 1849, were moved for in open court, granted, and recorded the following:

Order of appeal.

United States district court, May term, 1849.

Before the honorable Theodore H. McCaleb, judge of the said district court, Tuesday, 12th June, 1849.

On motion of Logan Hunton, attorney of the United States for the district aforesaid, and of Thomas J. Durant, on the same behalf, and on giving the court to understand and be informed that the United States are injured and aggrieved by the judgment of this honorable court, rendered against them at this term, in the matter of Villemont and others versus The United States, and desire to appeal therefrom.

It is thereupon ordered by the court, that an appeal be allowed in favor of the United States from the judgment aforesaid, returnable to the Supreme Court of the United States, at the next term thereof after the date of this order.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

I, Needler R. Jennings, clerk of the district court of the United States, sitting at New Orleans, in and for said district, do hereby certify, that the foregoing seventeen folios and twelve lines (18) of manuscript, contain and form a true, faithful, correct, and complete transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause in chancery, wherein C. de Vilemont et al. are plaintiffs, and the United States of America defendants, No. 134 of the land docket of said court.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at the city of New Orleans, this twenty-[L. S.] first day of September, one thousand eight hundred and forty-nine, and the 74th year of American independence.

N. R. JENNINGS,
Clerk U S. district court, eastern dist. of Louisiana.

I, Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana, do certify, that N. R. Jennings, who subscribed the above certificate, was at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court; that full faith and credit are due and ought to be given to all his attestations as such clerk, and that his above certificate is in due form of law.

1846.

In witness whereof I hereunto set my hand and seal, this 24th day of September, A. D. 1849.

THEO. H. McCALEB. [SEAL.]

The United States of America, to Catherine de Vilemont, widow of Carlos de Vilemont, sr., Carlos de Vilemont, jr., Ursin de Vilemont, Pedro de Vilemont, Zoë de Vilemont, and James Blaine, her husband, Don Carlos Gibson, Cecilia Gibson, and Adella Gibson, (the last three by their grandmother, said Catherine,) all of Chicot county, in the State of Arkansas, and Louis de Vilemont, of Louisiana, all heirs of the late Don Carlos de Vilemont, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to an order of appeal granted on the twelfth day of June, 1849, by the district court of the United States, in and for the eastern district of Louisiana, in a certain cause in chancery, (under the acts approved May 26th, 1824, and June 17th, 1844,) entitled (No. 134,) Vilemont et al. *vs.* The United States, wherein the said United States of America are now appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the appellants, as in the said order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

L. JANIN & M. TAYLOR, *Atty's.*

Witness hereto my hand, and the seal of said court, at the city of New Orleans, this twenty-fourth day of September, A. D. 1849.

THEO. H. McCALEB, [SEAL.]

Judge U. S. district court, eastern district of Louisiana.

Attest: ROBT. M. LUSHER, *D'y Clerk.*

Marshal's return.

Received, October 9, 1849, and on the 17th October, 1849, served a copy of the within citation of appeal on Ls. Janin, esq., one of the attorneys for the plaintiffs, by handing the same to him in person at New Orleans, and who at the time accepted service for the plaintiffs.

N. W. BUTLER,
D'y U. S. marshal, east. dist. of La.

Returned Oct. 18, 1849.
Return registered, Oct. 18, 1849.

ROBT. M. LUSHER, *D'y Clerk.*